IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.611 OF 2004

IN

WRIT PETITION NO.2809 OF 2004

W I T H

NOTICE OF MOTION NO.160 OF 2005

IN

WRIT PETITION NO.2809 OF 2004

Prantika Khatale & ors. .. .. Petitioners
v/s.
Hindustan Petroleum Corporation Ltd. .. .. Respondent

Mr.S.C.Naidu i/by M/s.C.R.Naidu & Co. for petitioners.

Mr.M.D.siodia with Mr.J.P.Cama i/by M/s.Rustomji & Ginwala for respondent.

CORAM : H.L. GOKHALE &
S.C.DHARMADHKARI, JJ.

DATE : 4TH APRIL 2005

P.C. :

1. The respondent to this petition is a statutory Corporation. It went for induction of Graduate Engineering Trainees (GETs) in July / August 2003 by visiting the campuses of various

Universities / Institutions such as IIT, REC, LIT and VJTI etc. The candidates to be selected had to be with 60% or more marks and those who had cleared their engineering examinations in the first attempt. A relaxation of 10% was provided to the Scheduled Castes and Scheduled Tribes candidates. Some 85 GETs were thus selected. The petitioners are two of them. It is their case that as per the respondent's own documents of campus selection, they were to be on training for 11 months and then on probation of 6 months to be followed by absorption.

2. In spite of this selection and compltion of training, they were asked once again to compete with larger number of other candidates. An advertisement dated 21st June 2004 was issued calling for new candidates and the petitioners feared termination of their jobs. It is for this reason and on the basis of the campus selection that the present petition is filed.

3. A Division Bench of this Court presided over by the Hon'ble Chief Justice Dalveer Bhandari and the Hon'ble Dr.Justice D.Y. Chandrachud granted an order of status quo on 31st August

2004. That order recorded the statement of the respondent that the GETs, who had not applied to appear for the ensuing examination, may as well apply and appear for that examination. The petition was thereafter heard on 7th October 2004 and Rule was issued and the hearing was expedited. All the candidates concerned have been working since then. A few of them appeared for the proposed examination and we are told that five of them passed that examination and, therefore, selected on the basis of the new examination.

4. The other GETs, who did not appear for the examination, have taken out Notice of Motion No.611 of 2004. The prayers in this Motion are for a separate examination for these GETs who were selected in July/August 2003 on the basis of campus selection and prayer (c) is not to recruit any Engineer in 90 posts and to keep some 90 posts vacant till the final decision in the petition.

5. The respondent who held the examination in the meanwhile has taken out another motion being Notice of Motion No.160 of 2005 and it prays for vacating the order of status quo which was passed by the earlier Division Bench on 7th October 2004

in Writ Petition No.2809 of 2004.

6. Now, as can be seen, though the petition is filed by two of these GETs, it is stated in the petition that it is on behalf of some 33 of them whose names are mentioned in Exhibit ‘C’ to the petition. It was submitted on behalf of the respondent that the benefit of the petition or the order of the status quo therein ought to be available only to these candidates and not the others. In this connection, it has to be noted that in spite of this submission, the fact remains that the respondent has given the benefit of the order of status quo to all the candidates who were selected by the campus selection in July/August 2003 and rightly so. The respondent cannot discriminate between two groups of such candidates being a statutory Corporation.

7. Mr.Naidu appearing for the petitioners in the first Notice of Motion i.e. Notice of Motion No.611 of 2004 submitted that the petition has been admitted principally because the matter required consideration. It is the petitioners’ case that the process of campus selection and the

documents in support thereof provide for a separate mechanism for recruitment of the particular year. The petition having been admitted, the candidates who are selected and appointed, have got to be protected till the disposal of the petition. His submission is that if the order of status quo which is running so far has some meaning, the respondent will have to be restrained from filling the sufficient number of seats required by this group of the GETs. He, therefore, submits that prayer (c) of Notice of Motion No.611 of 2004 is just and necessary.

8. Mr.Cama and Mr.Siodia appearing for the respondent, on the other hand, submitted that the scheme under which the GETs were selected was subsequently not approved by the Board of the Directors of the respondents. They submit that essentially it is a scheme of apprenticeship and it will have to be held to be governed under the Apprentices Act, 1961 and they rely upon the documents signed by the GETs when they were taken up for training. In this behalf, they rely upon a judgment of the Apex Court on the interpretation of some of the provisions of the Apprentices Act, 1961 in the case of **U.P. State Electricity Board**

vs. Shri Shiv Mohan Singh & anr. reported in 2004 (8) Scale page 475.

9. The Counsel for the respondent also rely upon a judgment of this Court in the case of **Petroleum Employees Union vs. Indian Oil Corporation Ltd. & ors. reported in (2001) 1 CLR page 785**, to which one of us (Gokhale, J.) was a Member and submit that it was a case where there was a similar scheme and the Division Bench held that they cannot claim any rights better than those available under the Apprentices Act, 1961.

10. As far as this later judgment is concerned, it will have to be noted that it was a case where the candidates had applied for working on a concerned Petroleum Pump in pursuance of the procedure of the 1st respondent-Indian Oil Corporation Ltd. In the present case, the officers of the respondents have gone to the campuses of major engineering institutions and have selected the students who got a first class and better marks in the first attempt in their graduation examination. In any case, the petition having been admitted, it will have to be examined as to whether campus selection procedure under

which the GETs were selected was a separate scheme by itself or whether it will have to be still considered as a one under the Apprentices Act, 1961. Vacating the order of status quo and/or not carving out the necessary number of seats for the GETs will render the petition infructuous. The order of status quo has been running since 31st August 2004 and it will be in the fitness of this case that this order of status quo should not be disturbed until the petition is heard and decided.

11. In the circumstances, as far as Notice of Motion No.160 of 2005 taken out by the respondent is concerned, we dismiss the same. As far as Notice of Motion No.611 of 2004 taken out by the petitioners is concerned, in our view, the petitioners have made out a case for protection and carving out adequate number of seats so that the GETs, who are selected, are adequately protected.

12. We are told that although the initial number of the GETs selected was about 85, some of them have resigned and one candidate has died. Those who have resigned will undoubtedly not be eligible for any protection. Out of the remaining

candidates, some five candidates are stated to have appeared for the subsequent examination and they are selected. If they are selected, obviously they do not need any protection from this Court. We may as well add that as per the affidavit filed by the respondent, affirmed on 4th April 2005, though the names of A.K.Ramesh and B. Bhumika appear in the list of the GETs, they were neither interviewed nor engaged by the petitioners. In the circumstances, out of all those candidates, who were selected in pursuance of the selection in July/August 2003, excluding those who have resigned or the candidate who has died and the five candidates who are subsequently selected and absorbed, all other candidates will be entitled to the protection of the status quo order which has been continuing so far and which shall continue till the disposal of the petition. The respondent-Corporation will carve out those number of seats and protect them. It will be open to the respondent-Corporation to proceed to fill the remaining number of seats which were sought to be filled through the subsequent Advertisement.

13. Mr.Siodia appearing for the respondent submits that, according to the

respondent-Corporation, the petitioners have no right to continue in the posts which are thus earmarked for them and that some other candidates who are selected are being denied their employment. He, therefore, submits that the main petition be heard expeditiously. We quite see the merit in the submission. Hearing of the petition is expedited and the petition will be listed for final hearing in the third week of June 2005.

14. Both the Motions stand disposed of with this order.

(H.L. GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)